

### **REMARKS/ARGUMENTS**

Favorable reconsideration and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks. Claims 1-30 are pending in the application. Claims 4, 17, and 23 have been amended. Claims 1, 4, 16, 17, 23, and 28 are independent. Applicant respectfully requests reconsideration of the application and seeks timely allowance of the pending claims.

### **Allowable Subject Matter**

Applicant notes with appreciation the Examiner's indication of allowable subject matter. Specifically, claims 28-30 are allowed. The subject matter of claims 4-12 and 17-23 has also been indicated as being allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Without conceding the propriety of the Examiner's rejections, but merely to expedite the prosecution of the present application, Applicant has amended claims 4, 17, and 23 into allowable, independent format. Accordingly, claims 4-12, 17-23, and 28-30 should be allowed. As discussed in greater detail hereinafter, Applicant submits that the remaining claims of the present application should also be allowed and the present application should be permitted to Issue.

### ***Reasons for Entry of Amendment***

In accordance with 37 CFR 1.116, Applicant respectfully submits that the foregoing amendments to the claims should be entered as these amendments do not raise additional issues for consideration and/or search. Rather, the foregoing

amendments reduce issues for appeal and/or present subject matter specifically identified by the Examiner as being allowable, in independent format. Specifically, claims 4, 17, and 23 have been amended into allowable, independent format. The Examiner is requested to contact the undersigned via telephone if the present application is not allowed after entry and consideration of this response.

### **Claim Rejections Under 35 U.S.C. § 103**

#### **Avery - de Verteuil**

Claims 1-3, 13, 16, and 24-25 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Avery (2004/0038677) in view of de Verteuil (U.S. Patent No. 7,035,647). This rejection is respectfully traversed.

Applicants respectfully traverse this rejection because the cited references fail to teach all of the claimed elements, and/or the Office has failed to provide adequate motivation to establish a prima facie case of obviousness.

For example, claim 1 recites, in part, an apparatus including a first signal monitor for *measuring* (i) the signal strength at said first signal monitor of a first packet transmitted by an emitter. The first signal monitor also *measures* (ii) the signal strength at said first signal monitor of a second packet transmitted by a wireless terminal. A processor (a) receives the location of the emitter. *The processor also (b) determines the location of the wireless terminal based on (i) the signal strength at the first signal monitor of the first packet transmitted by the emitter, (ii) the signal strength at the first signal monitor of the second packet transmitted by the wireless terminal, and the location of said emitter.* (Emphasis Added.)

The Office equates the interrogation units (NIU1) of Avery to the recited first signal monitor, the radio units (M1-M7) of Avery to the recited emitter which transmits the first packet, and the transponder (TS1) to the recited wireless terminal. However, the Office should note that in Avery, the radio units (M1-M7) are described as measuring the received signal strength. See, e.g., paragraph 0024 which clearly indicates the interrogation units perform no measurement, rather “the metering units measure the strength of the received signal.” Specifically, the interrogation units (NIU1) of Avery are not described or suggested as performing any measurement of signal strength (of any packets). Since the Office has equated the interrogation units (NIU1) of Avery to the recited first signal monitor, and the interrogation units (NIU1) of Avery do not perform any signal strength measurement, Applicant submits that Avery clearly does not describe or suggest a first signal monitor *for measuring (i) the signal strength at said first signal monitor of a first packet transmitted by an emitter and (ii) the signal strength at said first signal monitor of a second packet transmitted by a wireless terminal*, as recited in claim 1. Therefore, the very feature which the Office is relying upon to suggest signal strength measurement is not described or suggested as performing any signal strength measurement. Accordingly, this rejection should be withdrawn.

Applicant submits that de Verteuil does not describe or suggest this shortcoming of Avery. In fact, the Office has not relied upon Verteuil to advance this shortcoming of Avery and/or any motivation to include this feature in Verteuil. Therefore, claim 1, and each of its dependent claims is patentable over Avery and/or Verteuil for at least this reason.

Further, Applicant submits that there is no teaching or suggestion in either of the references of a processor, e.g., within an apparatus including the first signal monitor as recited in claim 1, which (b) determines the location of the wireless terminal based on (i) *the signal strength at the first signal monitor of the first packet transmitted by the emitter, (ii) the signal strength at the first signal monitor of the second packet transmitted by the wireless terminal, **and** the location of said emitter.* While the system of Avery suggests knowledge of the location of the radio units (which were equated to the recited emitter) when determining transponder (which was equated to the recited wireless terminal) location based on signal strength transmitted by the wireless terminal, there is no suggestion anywhere in Avery of any interrogation unit receiving packets from both a wireless terminal and radio units. Rather, the packets from the transponder are transmitted to the radio units which are then transmitted to the interrogation units. Therefore, the alleged analogous interrogation units (NIU, equated to the recited first signal monitor) never receive and/or measure two packets for signal strength, e.g., one from a wireless terminal, and one from an emitter for signal strength. The interrogation units received packets from only the radio units. While the Office has suggested that Avery describes determining transponder location based on two signal strength measurements and the location of an emitter, this feature at paragraph 0006, lines 1-20 and paragraph 0020-0021 of Avery. Accordingly, this rejection should be withdrawn.

As described above with respect to claim 1, Applicant submits that the Avery in view of de Verteuil does not describe or suggest each and every feature of the unique combination of limitations of claim 16. For example, claim 16 recites, in part, a first signal monitor and a second signal monitor. The Office has clearly equated the

interrogation units NIU1, NIU2 to the recited first signal monitor and the recited second signal monitor. Even a cursory review of Avery reveals that the interrogation units do not perform any measurement of signal strength, e.g., the radio metering units measure signal strength (but only of packets coming from the transponder). Therefore, Avery in and/or de Verteuil do not describe or suggest any signal monitors which make (i) a first plurality of signal strength measurements. . . (ii) a measurement of at least one packet from a wireless terminal. . .and/or a second plurality of signal measurements, as recited in claim 16. Accordingly, this rejection should be withdrawn.

Applicant respectfully submits that claim 16, and each of its dependent claims are patentable over Avery and/or de Verteuil for at least this reason.

**Avery - de Morioka**

Claims 14, 15, 26, and 27 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Avery in view of de Morioka (2006/0112272). This rejection is respectfully traversed. Applicants submit that Morioka fails to cure the deficiencies of Avery as applied in the rejection of independent claims 1 and 16, as noted above. In fact, the Office has not relied upon Morioka to advance any of the shortcomings of Avery described above with respect to claims 1 and 16. Therefore, these dependent claims are allowable at least by virtue of their dependency from their respective independent claims.

Applicant does not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, Applicant may have not addressed all characterizations of the art and reserves the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicant to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend

**CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any

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additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, at the telephone number listed below.

Respectfully submitted,

/Matthew T. Shanley/

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